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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.				
10/582,823	06/14/2006	Kenneth L. Arrington	21439YP	7413				
210 MERCK P O BOX 2000 RAHWAY, NJ 07065-0907	7590 06/23/2010		<table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">TRUONG, TAMTHOM NGO</td></tr></table>		EXAMINER		TRUONG, TAMTHOM NGO	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/582,823	<b>Applicant(s)</b> ARRINGTON ET AL.	
	<b>Examiner</b> TAMTHOM N. TRUONG	<b>Art Unit</b> 1624	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2010.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-8, 10 and 11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-8, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### FINAL ACTION

Applicant's amendment of 4-6-10 has been fully considered. The cancellation of claims 1, 9 and 12-34 has overcome the previous 102 rejections based on **Heider et. al.** (US'788), **Aldag et. al.** (US'448), **Yale et. al.** (US'778), **Wang et. al.** (Bioorg. & Med. Chem. Lett., 2002), **Griffin et. al.** (J. Med. Chem., 1998), **Cruickshank et. al.** (J. Med. Chem., 1974). However, the amended claims have necessitated new ground of rejection.

Claims 2-8, 10 and 11 are pending.

### *Claim Rejections - 35 USC § 103*

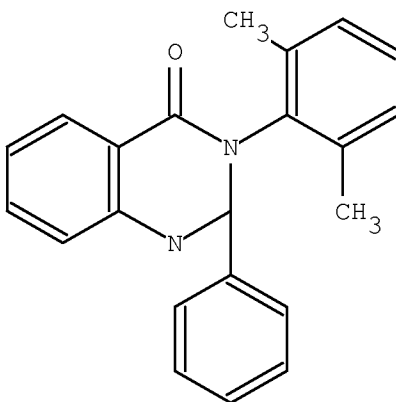
The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 2-8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Yale et. al.** In column 2, Example 5 describes the compound of "2,3-dihydro-2-phenyl-3-(2,6-xylyl)-4(1H)-quinazolinone" which has the following structure:

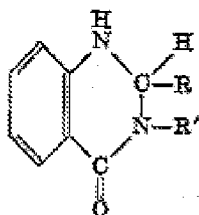


The disclosed compound has *phenyl* groups at the 2- and 3- positions, and can inhibit cell growth which suggests treating cancer. The disclosed compound differs from the claimed compound by not having a substituted *phenyl* group at the 2-position, but such a substituted phenyl group at that position can be found in Example 2. The phenyl at the 3-position is a 2,6-xylyl, which is a position isomer of the one in formula II (i.e., (3- $R^{4b}$ -4- $R^{4a}$ )-*phenyl*). Thus, the instant subgenus formula II is clearly suggested by Yale in the generic formula I where possible permutations can have substituted phenyl groups at 2- and 3- positions, see the following excerpt:

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This invention relates to novel substituted 2,3-dihydro-4(1H)-quinazolinones of the formula

(I)



wherein R is selected from the group consisting of phenyl, o-chlorophenyl, p-chlorophenyl, trans-2-phenethenyl and 2-thenyl and R' is selected from the group consisting of hydrogen and 2,6-xylyl, provided that R' is 2,6-xylyl only when R is phenyl.

Compounds that are position isomers are expected to have similar properties. See *In re Crounse* 150 USPQ 554; *Ex parte Engelhardt* 208 USPQ 343; *In re Mehta* 146 USPQ 284; *In re Norris* 84 USPQ 458, and MPEP 2144.09 (February, 2003 Edition) regarding position isomerism. Thus, it would have been obvious at the time the invention was made to expect instant compounds to possess the utility taught by the applied art in view of the close structural similarity outlined above.

**Non-elected subject matter:** This application contains claim 5 which is still drawn to an invention nonelected with traverse in the reply filed on 10-12-09. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAMTHOM N. TRUONG whose telephone number is (571)272-0676. The examiner can normally be reached on Monday thru Friday (9:00-5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. James O. Wilson can be reached on 571-272-0661. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tamthom N. Truong/  
Examiner, Art Unit 1624  
6-18-10

/James O. Wilson/  
**Supervisory Patent Examiner, Art Unit 1624**